Cri A 90/98

(2)

CH-189 / (Jail)
C. J. P. R. 11/94/2,000

CF0000060503

DB(Cm)

APPEAL OF PRISONER

No. 6733 Name रतिराम

Father's name हरदू साकिन :- चुहका, थाना रवमहसिया हाल मुकाम- मजगाँव थाना - सहसपुलोधा

Residence राजनांदगाँव Age 38 वर्ष

Sentenced to आजीवन कारावास On 12.11.97

जुर्माना - 1000 या 6 माह सश्रम

Under section 302 भा.दं.वि. by मान. अति. सत्र. न्या. श्री केशव प्रसाद अवस्थी, राजनांदगाँव

S.T. No. 68/96 (मध्य)

It is explained to the prisoner that if he states or wishes to be represented by legal practitioner the Appellate Court will not proceed with the base for seven days unless the legal practitioner appears. If the legal practitioner does not appear within seven days he may not heard at all. If the prisoner states that he does not wish to be represented by legal practitioner the court may proceed at once with the case and will not be obliged to give a hearing to any legal practitioner who should appear.

1 Date of Application for copy of Judgement .....

2 Date on which copy received .....

3 Date on which Appeal sent .....

4 Whether the prisoner wishes to be represented or not – Yes / No

---

No. 6733 Name रतिराम S/o हरदू

Confined in केन्द्रीय Jail रायपुर

No. 395/वि/97 Dated 24/12/1997

Forwarded to the ~~CHIEF JUDICIAL MAGISTRATE~~ मान. अति. पंजीयक महोदय मान. उच्च न्यायालय म.प्र. जबलपुर

togather which a copy of judgement or order passed in the case for favour of transmission to the proper Appellate Court.

अलग्ना - S.T. No. 68/96 की मूल प्रतिलिपी।

Superintendent 24/12/97

Superintendent,
Central Jail, Raipur. (M.P.)

Date of receipt in ..... office .....

Date of receipt record to accompany the .....

Memo of Appeal to the Appellate court .....

High Court of Madhya Pradesh
JABALPUR
Section 6 JAN 1998

No ..... Dated ..... 199.....

Forwarded to the .....

Registration No. 11 S.T. (Jail)
Record Clerk
High Court, Jabalpur.

Date of receipt in Appellate Court .....

(P. T. O.)

XI-HC-78

(10)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक C.A. 90/98 **सन्** ~~200~~

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

Division Bench: -
Hon'ble Mr. L.C. Bhadoo and
Hon'ble Mr. V.K. Shrivastava, JJ.

11-9-2006

Mrs. Uma Tiwari, counsel for the appellant.

Mr. Akil Mishra, Panel Lawyer for the State/respondent.

Oral judgment dictated on *Dais.*

Per L.C. Bhadoo, J: -

This appeal is directed against the judgment of conviction and order of sentence dated 12-11-1997 passed by the Additional Sessions Judge, Khairagarh, in Sessions Trial No.68/96, whereby learned Additional Sessions Judge after holding the accused/appellant guilty for commission of offence under Section 302 of the I.P.C. for committing the murder of his wife namely, Parvati Bai, sentenced him to undergo imprisonment for life and pay a fine of Rs.1,000/-, in default of payment of fine to further undergo R.I. for six months.

Case of the prosecution, in brief, is that on 24-12-1995 at about 9 a.m. when Parvati Bai, wife of the accused, was going to market Than Khamariya and when she covered a distance of 1 km., the accused came from behind and said that "now, you go to the market for whole day" and attacked with a knife for five times as a result of which, she fell down and blood started oozing out of the injuries. As the father of Parvati Bai was also coming towards that side, when he came to know about the incident, he reached near his daughter and on enquiry she informed that accused/ appellant Ratiram Mahra has attacked her with the knife. On this, she was

P.T.O.

मामला क्रमांक ..... G.A. 90/98 **सन्** ~~200~~

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

taken to Police Station: Sahaspur Lohara and she gave the report Ex.P-12 on the same day at about 4 p.m. The police registered crime under Section 307 of the I.P.C. and sent Parvati Bai for examination of her injuries to Primary Health Centre, Sahaspur Lohara where, Dr. A.K. Shrivastava (PW-10) examined the injuries of Parvati Bai and noticed as many as ten incised wounds on epigastrium region, right renal angle, vertebral column, left lumbar region on posterior side and right thigh. He prepared the injury report Ex.P-9. He also examined the knife, the weapon of offence, and prepared the report Ex.P-11. However, during the treatment, Parvati Bai succumbed to the injuries sustained by her and died on 31st January, 1996, on which the offence was converted into Section 302 of the I.P.C.

After giving notice Ex.P-7, to the Panchas, the Investigating Officer prepared Panchnama of the dead body of Parvati Bai (Ex.P-8). The dead body was sent for post-mortem to Mekahara Hospital, Raipur under Ex.P-16, where Dr. D.C. Jain conducted post-mortem and prepared the post-mortem report Ex.P-17. Site plan Ex.P-18 was prepared. The accused gave memorandum (Ex.P-3) based on which the knife was taken into possession at his instance under Ex.P-4, same was sent for chemical examination to the Forensic Science Laboratory, Raipur, from where the report Ex.P-21 was received.

After completion of investigation, charge sheet was filed in the Court of Judicial Magistrate, First Class, Kawardha, who in turn committed the case to the Sessions Judge, Rajnandgaon, from where learned Additional Sessions Judge, Khairagarh, received the case on transfer for trial.

P.T.O.

मामला क्रमांक ...G.A.90/98... **सन्** ~~200~~

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

The prosecution in order to establish charge against the accused examined 11 witnesses. Statement of the accused was recorded under Section 313 of the Cr.P.C. in which he denied the material appearing against him in the prosecution evidence and stated that he is innocent. Learned Additional Sessions Judge after hearing the arguments of Additional Public Prosecutor and counsel for the accused, convicted and sentenced the accused as mentioned in para 1 of this judgment.

We have heard Mrs. Uma Tiwari, learned counsel for the appellant and Mr. Akhil Mishra, learned Panel Lawyer on behalf of the State/ respondent.

The homicidal death of Parvati Bai has not been disputed by learned counsel for the appellant. Apart from that, looking to the dying declaration (Ex.P-12) made by Parvati Bai by lodging the report before Police Station and the oral dying declaration made before her father Dhiraji (PW-2) as also looking to the evidence of Dr. A.K. Shrivastava (PW-10), the injury report (Ex.P-9) and the post mortem report (Ex.P-17), it is established that the death of Parvati Bai was homicidal in nature.

As far as involvement of the accused in the crime in question is concerned, Dhiraji (PW-2), father of the deceased has stated in his evidence that on the fateful day he along with his daughter Parvati Bai left for market Than Khamariya, but he stayed back at the cycle shop in order to inflate the tyres, in the mean time, Parvati Bai had covered certain distance and the accused all of a sudden came from behind and attacked her with a

मामला क्रमांक G.A. 90/98 **सन्** ~~200~~

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

knife, as a result of which she received injuries and fell down. When her father came to know, he immediately rushed towards the place where Parvati Bai was lying and on enquiry Parvati Bai informed him that accused Ratiram (her husband) assaulted her, and thereafter, he has fled from the scene of occurrence.

Thus, Parvati Bai made oral dying declaration before her father Dhiraji (PW-2) who has proved the same. The said dying declaration stands corroborated by the fact that the accused while in police custody gave memorandum Ex.P-3 regarding the place where he kept the knife and in pursuance of that he got recovered the knife under Ex.P-4. The said knife was found stained with blood, same was sent for chemical examination to the F.S.L., Raipur and as per the report Ex.P-21, blood was found on the knife. Sari of Parvati Bai was taken into possession under Ex.P-5 and the same was also found stained with blood. Therefore, based on the oral dying declaration made by Parvati Bai before her father Dhiraji (PW-2), corroborated by the circumstantial evidence i.e. recovery of blood stained knife at the instance of the accused and recovery of the blood stained sari involvement of the accused in committing the crime in question is established. In the circumstances, to this extent, we do not find any illegality or infirmity in the finding of the trial Court.

As far as conviction under Section 302 of the I.P.C. is concerned, learned counsel for the appellant argued that there was a dispute between husband & wife, as the wife was saying to the accused that he is not working properly, without any intention to cause death, the accused assaulted the

P.T.O.

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

deceased on 24-12-1995, whereas the deceased died after a gap of one month seven days i.e. on 31st January, 1996. Therefore, offence against the accused does not travel beyond Section 304 Part-II of the I.P.C.

On the other hand, learned Panel Lawyer supported the judgment of the trial Court and argued that looking to the nature and number of injuries, the accused has rightly been convicted under Section 302 of the I.P.C.

In order to appreciate the arguments advanced by learned counsel for the parties, we have perused the record. It is not disputed that the deceased sustained injuries on 24-12-1995, whereas she died on 31st January, 1996. Moreover, when the deceased asked the accused that he is not working properly, as a result of anger, the accused assaulted the deceased with knife in a fit of anger. Therefore, coupled with the gap between the incident and the death occurred i.e. after one month seven days of the incident, it can be inferred that the accused assaulted the deceased with intention to cause her death. It cannot be inferred that the accused caused the injuries so imminently dangerous that it must in all probabilities cause death.

In the circumstances, looking to the nature of injuries and the weapon of offence used, we are of the considered opinion that offence under Section 304 Part-I of the I.P.C. is made out against the accused.

P.T.O.

मामला क्रमांक G.A. 90/98 **सन्** ~~200~~

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	In the result, the appeal partly succeeds and the same is partly allowed. While setting aside conviction and sentence imposed upon the accused under Section 302 of the I.P.C., the accused is convicted under Section 304 Part-I of the I.P.C. and sentenced to undergo imprisonment for ten years eight months. It is stated that the accused is in custody since 27-12-1995, thereby he has already undergone the sentence imposed upon him. He be set at liberty forthwith, if not required in any other case. Parties are entitled for certifi[illegible] of this order. **Sd/-** **L.C. Bhadoo** **Judge**	**Sd/-** **V.K.Shrivastava** **Judge**

Soma

P.T.O.

8/7/07